

COPY OF TRANSCRIPT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JIMMY INNOCENT,

Plaintiff,

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT and unknown Police
Officers "JOHN DOE A-Z", individually
and in their capacities as Police
Officers of the NYC Police Department,

Defendants.
----- x

65 Broadway
New York, New York

May 6, 2008
1:55 p.m.

**DEPOSITION of THE NEW YORK CITY POLICE
DEPARTMENT**, the Defendant in the above-entitled
action, by **OFFICER BRIAN MOORE**, held at the
above time and place, pursuant to Notice, taken
before Risa Karr, a shorthand reporter and
Notary Public within and for the State of New
York.

LEX#67317



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A Yes.

Q What was your basis for your conclusion that you had probable cause to arrest Mr. Innocent?

A I'm sorry, can you repeat it?

Q What was the basis for your conclusion that you had probable cause to arrest Mr. Innocent?

A I believe I testified before he was found to be trespassing, there were weapons and marijuana in the same building, same vicinity he was in.

Q Let's take a step back. When you say there were weapons and marijuana in the same vicinity in the building he was in, can you be more be specific when you use the term vicinity?

A Within the same enclosed space.

Q Is there a specific distance when you use the term vicinity?

MS. SCHARFSTEIN: Objection.

A Approximate.

Q When you say vicinity, are you talking a distance of five feet, ten feet or

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some other distance?

A When I talk about vicinity in particular?

Q Yes, with regard to this particular instance, you said that there were guns and drugs within the vicinity of Mr. Innocent.

MS. SCHARFSTEIN: Objection.

A I didn't say that.

Q Correct me. Tell me what you did say.

A Weapons and drugs.

Q You didn't use the term vicinity?

A Within the vicinity of Mr. Innocent.

Q My question is when you say within the vicinity of Mr. Innocent what do you mean by that?

A Vicinity is an approximation of distance.

Q What is your approximation of distance when you use the term vicinity?

A Vicinity is a broad term. Approximation is specific. We can get into

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defining words. I'm trying to answer your question the best that I can. If you can ask me a specific question.

Q I'm trying to understand when you said there were weapons and drugs within the vicinity of Mr. Innocent.

A Yes.

Q I'm trying to understand when you say within the vicinity what do you mean by that?

A My definition of vicinity?

Q As it relates to this particular instance.

MS. SCHARFSTEIN: Objection.

A For clarification purposes are you asking me the approximate distance of the weapons and drugs to Mr. Innocent?

Q Right. In terms of your usage of the term vicinity, when you say vicinity I guess that is my question. What distance are you saying the weapons and drugs were in relation to Mr. Innocent?

MS. SCHARFSTEIN: If you are not sure of the question ask him

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to clarify it.

A Are you asking me my definition of
vicinity?

MS. SCHARFSTEIN: It is the
attorney's job to ask the
question.

A I don't understand the question.

Q The question is -- are you asking
for my definition of vicinity? Let's take a
step back. Is it fair to say you effected the
arrest of Mr. Innocent?

A Yes.

Q Would it also be fair to say you
effected the arrest because there were weapons
and drugs within the vicinity of Mr. Innocent;
is that correct?

A Yes.

Q You also said you next effected
the arrest because you believe he was
trespassing?

A Yes.

Q With regard to your use of the
word vicinity, my question is when you use
that term as it related to Mr. Innocent could

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you give me the distance that the weapons and
drugs were to Mr. Innocent?

MS. SCHARFSTEIN: How far
away were they from the weapons --

MR. PRESTON: If he doesn't
understand.

A I don't understand your question.

Q When you use the term vicinity
what do you mean by that?

A I use it as an umbrella term which
one would go back and tell the specific for
specifics.

Q Why don't we talk about the
approximation in terms of distance as it
relates to the weapons and drugs and Mr.
Innocent.

MS. SCHARFSTEIN: Objection.
Go ahead.

Q My question is where were the
drugs and weapons in relation to Mr. Innocent?

MS. SCHARFSTEIN: Objection.

A Are you asking for a specific -- I
don't understand the question again. Maybe
you could narrow it down for me.

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MR. PRESTON: I have to take
a ten-minute break to call this
judge.

(Whereupon, a recess was
taken at this time.)

Q I was asking questions earlier
about your testimony which you said that there
were weapons and drugs in the vicinity of Mr.
Innocent.

What is your basis for the
conclusion there were weapons and drugs in the
vicinity of Mr. Innocent?

MS. SCHARFSTEIN: Objection.

A Would you rephrase the question?

Q Sure. I'm asking upon what facts
do you rely upon to form the conclusion there
were weapons and drugs in the vicinity of Mr.
Innocent?

MS. SCHARFSTEIN: Objection.

A I'm trying to think of how best to
answer your question.

Q Sure. Do the best you can.

A Can you repeat it for me, please?

Q Upon what facts do you rely to

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support your statement that there were drugs
and weapons in the vicinity of Mr. Innocent?

MS. SCHARFSTEIN: Objection.

A Okay. I can see weapons, I can
see a defendant.

Q When you say a defendant, are you
referring to Mr. Innocent?

A In this particular case, Mr.
Innocent, and they are in the vicinity of each
other.

Q You said you can see weapons. Did
you also say you can see drugs?

A At this point I see weapons.

Q You said they were within the
vicinity of Mr. Innocent. Now where did you
see that?

A The arrest location.

Q Where was that?

A If I can refer to my notes I can
tell you the exact address.

Q Before we try to get the exact
address was it at a specific location at that
address?

A In regards to?

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Q Your statement when you say you see weapons and you see a defendant.

A Yes, there is a specific location.

Q Where at the address, the arrest location, did you see the weapons and the defendant?

A The second floor.

Q Describe to me the second floor.

MS. SCHARFSTEIN: Objection.

A It appears to be a storage area.

Q Do you have an idea about how big the storage area is?

A It would be an approximation. I could be off by quite a distance.

Q Give me your best approximation.

A Again, this is just a guess, an approximation, roughly the second floor is maybe 20 feet by --

MS. SCHARFSTEIN: You can't guess because that doesn't help anyone. If you can give a reasonable approximation then you can give an answer, but only you can decide if you can do that.

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2 A I don't want to give you an exact
3 guess or approximation because I could be far
4 off. So as far as the dimensions of the
5 building?

6 Q No. We are talking about the
7 second floor.

8 A Right, but the second floor is the
9 same as the first floor as far as the
10 dimensions. The building was built straight
11 up and down.

12 Q So I understand, is it your
13 testimony that the size of the room is the
14 dimension of the building?

15 MS. SCHARFSTEIN: Objection.

16 Q I'm trying to ascertain --

17 A I'm trying to tell you I can't
18 give you an exact approximation without
19 possibly being off and I can't recall exactly
20 and I never knew the exact dimension of the
21 building.

22 Q Could you describe where you saw
23 the weapons in the second floor? Let's take a
24 step back. Does the second floor have rooms
25 or is it just an open space?

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2 A There is, from what I remember,
3 one room within a larger room.

4 Q Where is that room within the
5 larger room?

6 A Towards the back of the building.

7 Q Towards of the building?

8 A Back of the second floor.

9 Q Does that room have a door on it?

10 A Yes.

11 Q When you enter the second floor
12 was that door open or closed?

13 A It was open.

14 Q Who was in that room, do you
15 recall?

16 A I recall there was an individual
17 there. If I can refer to my notes I can give
18 you an exact person.

19 Q Do you recall whether Mr. Innocent
20 was in that room?

21 A No.

22 Q He was not in that room?

23 A At the time I was there?

24 Q Yes.

25 A No.

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Q Where did you observe Mr. Innocent?

A On the second floor.

Q Where on the second floor?

A Approximately in the middle of the second floor.

Q The middle of the second floor.

Could you give me an approximation as to how far he was from the room when you first observed him?

A Approximately give or take some feet, ten to fifteen.

Q Ten to fifteen feet from the room?

A Yes.

Q You said you also observed weapons?

A Yes.

Q Where did you observe the weapons?

A I observed weapons on what appeared to be a desk on the second floor.

Q Where was the desk in relation to the room?

A Which room?

Q You said there was only one room on the second floor.

A So not the second floor in

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general.

Q Is there more than one room on the second floor?

A No. There is one room on the second floor.

Q You said there was a desk that you observed weapons; was that on the second floor?

A Yes, it was.

Q Was that inside the room you observed this desk?

A No, it was not.

Q Where did you observe the desk in relation to the room?

A Outside of the room against the wall.

Q Of the room?

A Correct.

Q Mr. Innocent in relation to the desk, how far was he from the desk?

A It is going to be another approximation.

Q I understand.

A Roughly ten to fifteen feet.

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Q What was Mr. Innocent doing when you observed him, when you first observed him?

A He was laying motionless on the floor.

Q This was, again, ten to fifteen feet from the room and ten to fifteen feet from the desk?

A Approximately, an approximation, yes.

Q Do you have an approximation as to how tall Mr. Innocent is?

A Between five and six feet.

Q Would it be fair to say that when you observed Mr. Innocent laying down that the room was not within his reach?

MS. SCHARFSTEIN: Objection.

A Define within his reach.

Q From where he was laying down could he reach the room if he stretched his arm out?

A No.

Q Would the same answer be the case that where he was laying down at would he be able to reach the desk if he stretched his arm

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A Correct.

Q The first time?

A Correct.

Q Where did you observe the weapon?

A Where?

Q Yes.

A Which weapon?

Q When you were there on June 25th
how many weapons did you observe?

A From what I can remember, three.

Q Where did you observe the weapons?

A I observed two weapons, from what
I remember, on the desk.

Q Where was the desk at, and is this
the desk you are referring to in this picture?

A The top right photograph is the
desk.

Q You said you observed two weapons
on the desk?

A Correct.

Q On top of the desk?

A Yes.

Q Where was the desk at?

A On the second floor of the

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building.

Q Where?

A Towards the back of the room.

Q Towards the back of what room?

Remember there is a room within a room.

A The larger room.

Q When you say the larger room where
was the desk in relation to the room within
the room?

A Is it from what I remember. I
don't believe you can tell from the
photograph. It was next to the wall which
separated one room from the other.

Q So the desk was next to the wall
of the room within the room, correct?

A Yes.

Q When we were talking earlier about
the table, are you referring to the desk
that's depicted in this picture?

A I don't remember saying table.

Q My question is when we were
talking about Mr. Innocent being ten to
fifteen feet away, were you referring to this
desk or were you referring to a table?

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A I was referring to the desk.

Q You observed two guns on this desk?

A No.

Q I misunderstood your testimony. What did you observe on the desk?

A A switch blade and at least one other knife. I don't remember the exact type.

Q Did you observe any other weapons when were you there on June 25th?

A Yes.

Q What did you observe and where did you observe it at?

A I observed a handgun.

Q Where did you observe it?

A That weapon was found in the second room.

Q That's the room within the room?

A The room within the room.

Q Where was it found in the room within the room?

A Inside of a green ammo box.

Q Was the ammo box closed?

A No.

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Q It was open?

A Correct.

Q Where was the green ammo box within that room?

A You walk into the room, on the left-hand side when you walk in.

Q What was there on the left-hand side?

A The ammo box.

Q Was it on the floor or was it on a desk?

A I don't remember exactly.

Q Who was in that room when you observed that green ammo box?

A Defendants. If I can refer to my notes I can tell you specifically.

Q Do you know whether Mr. Innocent was in that room?

A Yes.

Q In the room within a room?

A I know where he was.

Q My question is when you saw the green ammo box was Mr. Innocent in that room where the green ammo box was?

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2 photograph.

3 Q Let me have you take a look at
4 this.

5 MR. PRESTON: We will mark
6 it as Plaintiff's 3 and mark this
7 as Plaintiff's 4.

8 (Documents were marked as
9 Plaintiff's Exhibits 3 and 4, for
10 identification, as of this date.)

11 Q Take a look at Plaintiff's 3.

12 A Okay.

13 Q Can you identify what has been
14 marked as Plaintiff's 3?

15 A Yes, I can.

16 Q What is that?

17 A It is a property clerk invoice.

18 Q For who?

19 A For the police department.

20 Q Relating to who?

21 A A prisoner name Innocent, Jimmy.

22 Q Is this a document that you
23 prepared?

24 A Yes.

25 Q Is this based upon information you

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gather after searching Mr. Innocent?

A Yes.

Q Would this reflect the results of your search of Mr. Innocent?

A Yes.

Q Other than what is reflected here would there be anything else that you found on Mr. Innocent's person when you searched him?

A I would have to refer to my notes to be sure.

Q If there was something else would it be reflected on this document?

A No.

Q Why not?

A This is a document collecting money. The money goes on separate documents than other items.

Q I will have you take a look at what has been marked Plaintiff's 4. Can you identify what has been marked as Plaintiff's 4?

A Yes.

Q What is Plaintiff's 4?

A Affidavit in Support of Search

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Warrant.

Q Who prepared this document?

A Assistant district attorney.

Q Is this a document that you reviewed?

A Yes.

Q Is this a document that you reviewed prior to signing?

A Yes.

Q When you reviewed it was this document accurate?

A I believe so.

Q Let's start at paragraph 6. Take a look at paragraph 6. Just look at the first sentence. Actually, why don't you read all of paragraph 6 and then I will ask you questions about it. Okay?

A Okay.

Q You had a chance to finish that paragraph?

A Yes.

Q Let's start with you were at 31 West 138th Street, correct, on June 25th?

A Yes.

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Q How did you get there?

A By car.

Q Who were you there with?

A In the car?

Q Yes.

A My partner.

Q Why were you there?

A We were driving down the street.

Q You were driving down the street
and what did you observe?

A Observed an individual was
standing in front of a commercial
establishment.

Q Was he outside or inside?

A Outside.

Q What, if anything, did you observe
beyond that?

A I observed an individual inside
the commercial establishment.

Q What did you do after that point,
the observation of the two individuals?

A Went upstairs.

Q You were in a car and you said you
were with your partner?

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A The officer I was working with.

Q Who was that?

A Sergio Marino.

Q You were with Officer Marino and
you observed two individuals?

A One individual.

Q Then you observed two individuals
in a store?

A Correct.

Q Were the lights on or off?

A Off.

Q What did you do at the point where
you observed these two individuals?

A Asked them questions.

Q What did you ask them?

A I asked them different questions.

Q Do you recall what you asked them?

A If I can refer to the affidavit.

Q This document here, okay. Because
you don't have an independent recollection of
what you asked them, correct?

A Yes.

Q That's why you have to refer to
the affidavit, correct?

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A Yes.

Q Go ahead.

A Asked an individual standing out front of the commercial establishment do you live around here.

Q Where was Officer Marino when you asked him that?

A He was driving the vehicle behind the wheel of the car.

Q When you asked the question where were you?

A In the car.

Q You were asking him these questions from the car window?

A The question I just read you, yes.

Q What happened at that point, what did he respond?

A Yeah, in here.

Q Then what happened at that point?

A I asked him what floor.

Q He said?

A Second.

Q What happened at that point?

A I asked what apartment. That's

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it.

Q What did he say?

A Did not reply.

Q What happened at that point?

A Started to walk away.

Q Who?

A The gentleman I was asking questions.

Q Do you know if either of those gentlemen, the gentlemen you were asking questions to or the gentleman inside the store, were either of those gentlemen Jimmy Innocent?

A No.

Q He started to walk away you said?

A Yes.

Q What happened at that point?

A We exited the car.

Q When you say he walked away, what direction did he walk when he was walking away?

A West.

Q He was walking away from the store?

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A Yes.

Q What happened at that point?

A We got out of the car.

Q Okay. Then what happened?

A Then we got out of the car. He said why are you bothering me. You cannot not mess with me.

Q What happened at that point?

A I believe my partner and I noticed keys on the inside of the commercial establishment.

Q In the door?

A In the lock, hanging from the lock.

Q Inside?

A Yes. I believe my partner or I, I don't recall who, asked whose keys do those belong to, something to that effect, which he responded that's my key.

Q What happened at that point?

A "Defendant started to walk away while yelling something that sounded like John while tilting his head and looking at the second floor of the commercial establishment."

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Q What was the individual inside the store doing at this point?

A I didn't know there was an individual inside the store.

Q When did you learn there was an individual inside the store?

A When I looked inside the store.

Q At what point did you do that?

A Once we placed the original individual that we stopped in the back seat of our police car.

Q Once you arrested the original individual?

MS. SCHARFSTEIN: Objection.

A Define arrest.

Q What do you define as arrest?

A I have a few definitions.

Q Give me the few definitions you have of arrest.

A To stop.

Q To stop somebody is not an arrest.

A To stop period is an arrest.

Q To stop an individual is an arrest?

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Q Tell me what other definition you have for arrest.

A There is the procedural arrest.

Q What does that mean?

A Placing someone in custody and doing arrest paperwork and giving them specific charges.

Q Do you have any other definition of arrest?

A Not at this time.

Q So the individual that you put in the station car, he was under arrest, correct, even by your own definition?

A Yes.

Q What did you do at that point? Let me step back. You testified at some point the gentleman said the name John and looked up at the second floor?

A Yes.

Q What did you do then?

A We stopped him from walking away. We asked him what he was doing. He didn't say anything. We put him in the back seat of the police car.

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Q What did you do at that point?

A I believe we put over the radio that we were entering a building.

Q What did you do at that point?

A Called for assistance before we entered the building, at which point we looked inside the building. It was open to you. We saw another individual who appeared to be sitting in the building.

Q Sitting where in the building?

A Halfway back in the commercial establishment.

Q On the first floor?

A Correct.

Q What happened at that point?

A Referring to the notes. "Asked the defendant if he lived at the location, defendant did not respond; did ask if there was anyone else in the building or upstairs. This individual said yeah, they are playing a game."

Q What happened at that the point?

A We walked up to the second floor.

Q How did you get up to the second

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floor?

A One foot in front of the other
upstairs.

Q Elevator, stairs?

A Stairs.

Q Where were the stairs located?

A From what I remember,
approximately in the middle of the first
floor.

Q Was there a door leading up to the
second floor?

A No.

Q So you and Officer Marino
proceeded to the second floor?

A Yes.

Q What did you do with the
individual that was on the first floor?

A We placed him in handcuffs and had
additional officers watch him in front of the
location.

Q So prior to you proceeding up the
stairs there were other officers on the scene?

A Yes.

Q Do you remember who the other

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officers were?

A I don't remember.

Q Do you know whether there was any
sergeants on the scene?

A At this point in time?

Q Yes.

A No, I don't remember.

Q After leaving this individual with
the other officers who proceeded upstairs?

A Officer Marino, myself and there
were other officers. I couldn't tell you. I
don't remember how many or their names.

Q What happened when you arrived on
second floor?

A "I saw Officer Marino run, I
followed, we had a really strong sent of
marijuana from the second floor. It was dark
to the point we needed flashlights."
Referring to my notes. "We observed other
individuals appear to be sleeping on the
second floor. They did not respond to us
yelling police. They were not awake." We had
to physically wake them.

Q Is that indicated here in the

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2 document you are referring to?

3 A This is from recollection. We saw
4 two water pipes, which are devices used for
5 smoking marijuana on top of the desk in the
6 second room. We observed a switch blade knife
7 on top of the same desk in the second room, 22
8 caliber ammunition on the top of the same desk
9 in the back of the room.

10 Q From your recollection, did you
11 observe anything else on the desk?

12 A Not from my recollection.

13 Q Other than what is here that's all
14 that was on the desk?

15 A No.

16 Q What else was on the desk?

17 A I would have to refer to my notes.

18 Q What happened at that point?

19 A At that point we were concerned
20 with any individuals that we could not see in
21 the room. It was dark. There was a room in
22 the back, a smaller room which had a door open
23 which was also dark, entered, actually I found
24 a light switch from what I could recall,
25 turned on the light switch, defendant appeared

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in that room.

Q Was that Mr. Innocent?

A In the smaller room, no.

Q Okay.

A I observed what appeared to be a gravity knife.

Q This is the individual that's in the back room?

A Yes. Also observed marijuana in the back room, ammunition box in the back room, large capacity black magazine in the back room with other various calibers of ammunition.

Q In the back room?

A In the back room and a 22 caliber revolver in the back room.

Q What happened at that point?

A The defendant or individual in the back room was asked to exit the room. He walked out of the room. I took the gravity knife from his person. He tried to run back into the back room figuring he was going for a weapon. We stopped him, at which point he refused to let us place him in cuffs to stop

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him from going into the back room.

Q What happened at that point?

A At that point we had all individuals in that room on the second floor in handcuffs. We asked them if anyone lived at the location.

Q Is that indicated in the notes here that you are referring to?

A I do not believe so. Again, this is referring to the sixth paragraph from before. This is no longer in the sixth paragraph.

Q If you want you can you can look at the entire document and tell me if you see that in the entirety of this document where you questioned them if they lived at this location.

A I don't see it mentioned in this document.

Q Was that based on your recollection?

A Was what based on my recollection?

Q The testimony you just gave about asking if anybody lived there.

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A Yes.

Q What happened at that point?

A The individuals were taken from the building, taken to the precinct, processed as arrest.

Q I'm going to hand you a packet of documents that was produced in discovery by the City of New York and you referred to your notes a couple of times earlier. Can you go through the documents?

MR. PRESTON: Off the record.

(Whereupon, a discussion was held off the record.)

Q Documents that are Bate stamped NYC 0000708 through NYC 000265.

MS. SCHARFSTEIN: That couldn't be that packet. That packet is way to small to have more than one hundred pages of documents. There must be a gap somewhere.

Q So the first series is 000078 through 000086. That's the first series.

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gave? Are you looking for something specific?

Q Now that you have reviewed the documents I want you to tell me what upon did you rely on in effecting the arrest of Mr. Innocent?

A Of the view of the weapons in proximity to Mr. Innocent.

Q Just so we are clear, you were the arresting officer, correct?

A Yes.

Q Did you rely on anything else other than what you testified to, review of the weapons in proximity to Mr. Innocent to support your arresting Mr. Innocent?

A Yes.

Q What?

A Defendant's statement.

Q Defendant's statement, who?

A Innocent's statement.

Q What were those statements?

A I can't recall specifically, but when asked if he lived in the building he said no.

Q Other than view of the weapons in

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proximity to Mr. Innocent, and the statement he didn't live in the building, was there any other basis for the arrest of Mr. Innocent?

A Yes.

Q What?

A An individual on the same floor ran when he saw the police, another individual within the same floor possessed a weapon.

Totality of circumstances, which I provided.

Q Other than the circumstances that you just articulated, was there any other basis that you had that supported your conclusion to arrest Mr. Innocent?

A No.

Q That was it?

A Yes.

Q With regard to the individual you said possessed the weapon, that individual who was the individual in the back room, correct?

A Yes.

Q That was the guy you testified had the gravity knife?

A Yes.

Q With regard to the individual that

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you said tried to run when they saw you, was that individual also the individual in the back room?

A No.

Q Who was that individual, do you know?

A I don't remember.

Q Do you recall where that individual was when you entered the room?

A I didn't see him when initially entered the room.

Q When you say do you know what he was running from?

A We yelled police. Officer Marino was in front of me going up the stairs. I can only infer he ran from Officer Marino.

Q You don't know where he started running from, correct?

A It would have to be from a spot you couldn't see the officers. I don't know specifically where.

Q How about with regard to, you said the view of the weapons in proximity to Mr. Innocent.

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A Correct.

Q When you say in proximity to the weapons, are you referring to the weapons that were in the back room? When you say view of the weapons in proximity to Mr. Innocent, are you referring to the weapons in the back room?

A As far as --

Q I asked you about the basis for why you arrested Mr. Innocent and you said due to the fact you said in view of the weapons that were in proximity to Mr. Innocent and I'm asking you what weapons are you referring to?

A The weapons on top of the desk.

Q How about the weapons in the back room?

A At that point in time, no.

Q So the weapons in the back room did not form a basis for your arrest of Mr. Innocent, correct?

A I don't understand forming a basis.

Q When you arrested Mr. Innocent and you said you arrested him based upon the weapons that were in proximity to Mr. Innocent

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I'm asking you what weapons are you referring to? Are you referring to any weapons that were in the back room?

A As far as the basis for his arrest?

Q Correct.

A No.

Q We are talking about only the weapons that were on the desk, correct?

A For the basis for his arrest?

Q Yes.

A Yes.

Q He was charged with possession of marijuana?

A Yes.

Q What was the basis for the charge of possession of marijuana?

A The devices on the desk which contained marijuana.

Q The devices that were on the desk that you said, what were those devices?

A Water bongs.

Q Did those water bongs have marijuana in it?

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2 A Residue.

3 Q Do you know?

4 A I would have to refer to notes.

5 Q What notes would you have to refer
6 to? There is the arrest report, this
7 affidavit, there is also the warrant
8 affidavit. Would any of those help you in
9 answering the question?

10 A I don't know if the water bongs
11 were sent to be tested for marijuana.

12 Q Do you know whether the water
13 bongs served as a basis for the charge of
14 criminal possession of marijuana against Mr.
15 Innocent?

16 MS. SCHARFSTEIN: Objection.

17 Q Do you understand the question?

18 A No.

19 Q With regard to the charge of
20 criminal possession of marijuana, upon which
21 facts did you rely in charging Mr. Innocent
22 with criminal possession of marijuana?

23 MS. SCHARFSTEIN: Objection.

24 A Which facts?

25 Q Yes. What information did you

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rely?

A That there was marijuana on the second floor.

Q Where?

A There was marijuana inside of water bongs.

Q Your testimony is you believe there was marijuana inside the water bongs but you are not sure?

MS. SCHARFSTEIN: Objection.

A No.

Q No what, you are not sure?

A That wasn't my testimony.

Q Do you know whether there was marijuana inside the water bongs? Do you know?

A I would have to have a report that said it was tested positive in order to say I knew there was marijuana.

Q In charging Mr. Innocent with criminal possession of marijuana did you base it on the water bongs?

MS. SCHARFSTEIN: Objection.

A Could you rephrase the question?

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2 Q I will ask it again. With regard
3 to the charge of criminal possession of
4 marijuana, what facts did you base it on?
5 What facts did you base the criminal
6 possession of marijuana?

7 MS. SCHARFSTEIN: Objection.

8 Q Or what information?

9 A That we found marijuana, over a
10 pound, on the second floor of the building.

11 Q Where did you find that marijuana?

12 A Inside the room within the room.

13 Q This is the back room?

14 A Yes.

15 Q Did you rely on any other
16 information in charging Mr. Innocent with
17 criminal possession of marijuana other than
18 what you just told me about?

19 MS. SCHARFSTEIN: Objection.

20 A Can you repeat?

21 Q Did you rely upon any other
22 information as the basis to charge Mr.
23 Innocent with criminal possession of
24 marijuana?

25 MS. SCHARFSTEIN: Objection.

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A If there was no marijuana, a pound
or more inside the --

Q You tell me about the marijuana in
the room. My question was there any other
information that you relied upon in charging
Mr. Innocent with criminal possession of
marijuana other than what you told me?

MS. SCHARFSTEIN: Objection.

Q If the answer to that question is
no, that's fine.

A I don't understand the question of
basis.

Q Mr. Innocent was charged with
criminal possession of marijuana, correct?

A Yes.

Q There had to be some fact or facts
upon which there was a reliance in coming to
the conclusion that he criminally possessed
marijuana, correct?

MS. SCHARFSTEIN: Objection.

A What do you mean by fact?

Q Or information. There had to be
some information upon which there was the
basis for charging Mr. Innocent for criminal

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2 possession of marijuana; isn't that correct?

3 A Yes.

4 Q My question is what information
5 was it?

6 A I saw marijuana.

7 Q Right. Where?

8 A In the room within the room.

9 Q I understand your testimony to be
10 that. My question is did you see marijuana
11 any other place that formed the basis for your
12 conclusion that Mr. Innocent criminally
13 possessed marijuana?

14 MS. SCHARFSTEIN: Objection.

15 A Rephrase the question.

16 Q Other than the marijuana you saw
17 in the room was there any other marijuana that
18 formed the basis of your conclusion that Mr.
19 Innocent criminally possessed marijuana?

20 MS. SCHARFSTEIN: Objection.

21 A Basis.

22 Q Or information that you relied
23 upon in charging Mr. Innocent with criminal
24 possession of marijuana?

25 MS. SCHARFSTEIN: Objection.

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Q Do you understand the question?

A Yes. The answer is yes.

Q What other information did you have?

A Proximity to the marijuana.

Q Again, we are talking about the marijuana in the back room, correct?

A Yes.

Q Other than the marijuana in the back room, did he have proximity to any other marijuana on the second floor?

MS. SCHARFSTEIN: Objection.

A I believe I already answered this.

Q Well, just to clarify.

A Ask me again.

Q Other than the marijuana in the back room, did Mr. Innocent have proximity to any other marijuana on the second floor?

A Yes.

MS. SCHARFSTEIN: Objection.

Q Where was that?

A Inside the water bong.

Q Other than the water bong, did Mr. Innocent have any proximity to any other

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marijuana on the second floor?

A At that time, no.

Q How about the charge of possession of firearm; what firearm are you referring to?

A Which firearm are you referring to?

Q According to the arrest report there is a reference to a firearm. Which firearm are you referring to?

A According to the arrest report I'm referring to the firearm found in the second room, the room within the room.

Q How about with regard to possession of a weapon in the third degree. What weapon are you referring to?

A The weapon, the gravity knife. Sorry, that's incorrect. I believe it is a switch blade, which is on the desk of the bigger room.

Q Let me have you take a look at the second page of Plaintiff's Exhibit 5, which is NYC 0000081, third full paragraph.

A Okay.

Q Do you see where it says deponent?

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That would be you, correct?

A Yes.

Q It says deponent observed on the second floor a switch blade knife; do you see that?

A Yes.

Q That switch blade knife, is that the knife you referred to as being on the desk?

A Yes.

Q Then is says you observed ten rounds of 22 caliber ammunition.

A Yes.

Q Where was that at?

A Approximately ten rounds and it was on the same desk as the switch blade.

Q How about the three water pipes?

A I don't recall specifically where each water pipe was recovered from.

Q You don't recall specifically. Do you recall where any of the water pipes were?

A They were all in that greater room.

Q Were they on the desk or not?

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A I don't recall specifically.

Q Do you recall whether any of them
were on the desk?

A I'm sorry?

Q Do you recall whether any of the
water pipes were on the desk?

A I don't recall.

Q Do you recall whether any of the
water pipes were within reaching distance of
Mr. Innocent?

A I don't recall.

Q Who's Police Officer Lugo?

A He is an officer that worked at
the 32.

Q What is his involvement with this
matter, do you know?

A I believe he helped conduct the
search warrant.

(Continued on next page to
accommodate jurat.)